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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/012,001	11/30/2001	Bernhard Schoelkopf	163230.1	2801
27662	7590	04/22/2005	EXAMINER	
LYON & HARR, LLP 300 ESPLANADE DRIVE, SUITE 800 OXNARD, CA 93036			ALAVI, AMIR	
			ART UNIT	PAPER NUMBER
			2621	

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/012,001

Applicant(s)

SCHOELKOPF ET AL.

Examiner

Amir Alavi

Art Unit

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-74 is/are pending in the application.
- 4a) Of the above claim(s) 1-33 and 71-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-70 and 74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## COMPUTER PROGRAM PRODUCT

- The following claim format is unacceptable and subject to a 101 rejection:

"A computer program product for performing the steps of ..."

Such a claim is non-statutory because the terminology "computer program product" alone has no set definition.

- (B) The following claim formats are acceptable and not subject to a 101 rejection:

"A computer program embodied in a computer readable medium for performing the steps of ..."

"A computer readable medium storing a program for performing the steps of..."

A statutory product with descriptive material must include a positive recitation of the computer readable medium -- MPEP 2106, case law, USPTO policy, all are founded on this.

## Claim Rejections - 35 USC § 101

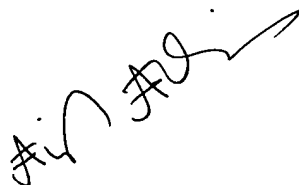
- 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- Claims 34-70 and 74 are directed to non-statutory subject matter. "A computer program comprising program modules...".
- These claims are non-statutory because the terminology "A computer program comprising program modules" alone has no set definition; in this regard, as recited in **MPEP 2106**, computer-related inventions are either nonfunctional descriptive material or functional descriptive material, computer programs fall into the second category, wherein, descriptions or expressions of the programs, are not physical things, they are neither computer components nor statutory processes, as they are not acts being performed, such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized and are only statutory when recited as being embodied in a computer-readable storage medium.

## Contact Information

- Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amir Alavi whose telephone number is 571-272-7386.
- The examiner can normally be reached on Mon-Thu.. 8:00 am thru 6:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Bhavesh Mehta can be reached on 571-272-7453.
- The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.
- For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Amir Alavi", is written diagonally across the bottom right of the page.